

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. NO. 04-11807-MLW

AT&T WIRELESS SERVICES OF
MASSACHUSETTS, INC., d/b/a AT&T
WIRELESS, and EASTERN TOWERS, LLC,

Plaintiffs

v.

TOWN OF WAYLAND, MASSACHUSETTS,
BOARD OF APPEALS OF THE TOWN OF
WAYLAND and JAMES E. GRUMBACH, ERIC B.
GOLDBERG, STEVEN FUGARAZZO,
LAWRENCE K. GLICK, SUSAN KOFFMAN,
SHAUNT SORIAN, ADIA GENNIS, LINDA
SEGAL, as they are members and alternate members
of the Board,

Defendants

MOTION TO ENLARGE TIME TO
FILE RESPONSE TO “PLAINTIFFS’
MOTION FOR AN ARGUMENT ON
THE MERITS AND JUDGMENT IN
THEIR FAVOR ON COUNT II
(SUBSTANTIAL EVIDENCE)” AND
“MOTION FOR PRELIMINARY
INJUNCTION” (ASSENTED TO)

Defendants Town of Wayland, Massachusetts, Board of Appeals of the Town of Wayland and James E. Grumbach, Eric B. Goldberg, Steven Fugarazzo, Lawrence K. Glick, Susan Koffman, Shaunt Sorian, Adia Gennis, Linda Segal, as they are members and alternate members of the Board (“Board of Appeals”, collectively “Town”), hereby move that the time for responding to the Plaintiffs’ Motion for an Argument on the Merits and Judgment in Their Favor on Count II (Substantial Evidence) (“Substantial Evidence Motion”) and Motion for Preliminary Injunction (collectively, “Plaintiffs’ Motions”) be enlarged until May 27, 2005.

As grounds for this Motion, the Town relies on the following:

1. This case is an appeal under the Telecommunications Act of 1996, 47 U.S.C. §332(c)(7), from the decision by the Board of Appeals to deny zoning permits for a 120-foot-high telecommunications facility at 137 Boston Post Road, Wayland, Massachusetts.

2. On April 15, 2005, Plaintiffs served the Town with the Substantial Evidence Motion; on April 19, 2005, Plaintiffs served the Town with the Motion for Preliminary Injunction.

3. The Substantial Evidence Motion is based on the record of proceedings filed by the Board of Appeals, which record consists of over 2,000 pages of documents, including transcripts, technical reports and various submissions in support of and in opposition to Plaintiffs' application for the wireless communications facility.

4. The Motion for Preliminary Injunction is based on a thirty-two page, eighty-paragraph expert opinion Affidavit with twenty-one Exhibits from Timothy Wysocki, a second Affidavit with two Exhibits from Mr. Wysocki, and two additional Affidavits with multiple Exhibits.

5. On April 26, 2005, the parties and counsel met with a mediator to attempt to resolve the litigation. A second mediation session may occur if certain issues are resolved favorably in the next two weeks. If so, a second session would occur on May 18, 2005.

6. In order to respond to the Motions, the Town will be required to address all of the issues in the litigation, including those which are the subject of expert testimony. The Town's expert is not able to evaluate and respond to the expert allegations in the Plaintiffs' affidavits filed in support of the Motion for Preliminary Injunction in sufficient time to enable the Town's attorneys to respond to the motion before May 27, 2005.

7. The Town's attorneys are particularly pressed for time at this time of year due to professional obligations associated with the Town Meeting schedules of other client towns. These schedules require the attorneys to prepare for and attend town meetings throughout the Commonwealth on April 25, 26, May 2, May 4, May 5, May 7 and May 10, 2005. In some

instances the town meetings may extend to other dates in the event that the meeting is not concluded in the first session.

8. Given the volume and extent of the Plaintiffs' Motions as well as the other professional obligations of the undersigned counsel, the Town's attorneys cannot meet the deadline for responding to the Plaintiffs' Motions under the applicable rules of civil procedure.

WHEREFORE, the Town requests that the time for it to respond to Plaintiffs' Motions be enlarged to May 27, 2005.

DEFENDANTS
TOWN OF WAYLAND,
MASSACHUSETTS, ET AL.
By their attorneys,

/s/ Patricia A. Cantor
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By their attorneys,

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